

General Information Letter: Response to survey regarding exclusion of income or gain on like-kind exchanges.

September 20, 2000

Dear:

This is in response to your letter dated August 7, 2000, which has been referred to the Department's Legal Services Division. The nature of your letter and the information provided require that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be viewed on our website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Your letter states as follows:

XX
has prepared a 50-state survey of state tax laws applicable to Section 1031 transactions. A
copy of the survey and the questionnaire upon which the survey is based is enclosed for your
reference.

The survey results will be made available to the public for use by professionals engaged in working with Section 1031 transactions. The information will also be presented at the upcoming meeting of the xxxxxxxxxxxxxxxx. Given the broad exposure the survey will have, it is very important that the information reflected in the survey is accurate. To this end, it would be extremely helpful if you could verify that the information listed for your jurisdiction is correct.

In order to ensure the accuracy of the survey results, please take a few minutes to read over the information for your jurisdiction and make any corrections that are necessary. The corrections can be made on either the survey results or on the questionnaire.

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The information contained in your survey regarding Illinois income tax law is correct, except with respect to “Note 14” under the heading “Unusual State Features of 1031 Exchanges.” Note 14 is apparently intended as a response to survey questionnaire question number 4. That question reads:

Does your state “recapture” deferred gain if the replacement property is located in another state and the replacement property is eventually sold without the imposition of a state income tax in the second jurisdiction? (For example, if an Arizona taxpayer exchanges Arizona investment real estate for Texas investment real estate in a Section 1031 exchange, and the Texas real estate is later sold for cash in a fully taxable transaction while the taxpayer is still a resident of Arizona, will Arizona tax the deferred gain attributable to the out-of-state real estate?)

Regarding the Illinois income tax consequences in the circumstances set forth by question 4, Note 14 states as follows:

xxxxxxxxxxxx reports recapture potential to the extent defined [sic] gain is business income subject to apportionment, in which case Illinois would tax gain multiplied by Illinois apportionment factor for year gain is realized.

Note 14 correctly reflects Illinois law only with respect to the taxation of nonresidents. With respect to residents, section 301 of the Illinois Income Tax Act (35 ILCS 5/301) requires that *all* items of income taken into account in the computation of base income be allocated to Illinois. This is so whether or not such items may be considered business or nonbusiness income.

As stated above, this is a GIL. Accordingly, it does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and wish to obtain a binding private letter ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of 86 Ill. Adm. Code 1200.110(b).

I hope this information is helpful. If you have further questions concerning this GIL you may contact Legal Services at (217) 782-7055. If you have further questions related to the Illinois income tax laws, visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker
Staff Attorney – Income Tax